IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8684 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISHBHAI M BHATT

Versus

NATHIBAI D THACKERSEY WOMEN'S UNIVERSITY

Appearance:

MR KA DAVE FOR MR HAROOBHAI MEHTA for Petitioner No. 1

MR ARUN H MEHTA for Respondent No. 1,4-5

SERVED BY RPAD - (R) for Respondent No. 2-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 28/09/2001

ORAL JUDGEMENT

The petitioner-individual, has challenged the validity of selection and appointment of Respondent No.5 to the post of Project Officer at Smt.N.C.Gandhi and Smt. B.V.Gandhi Mahila Arts & Commerce College, Bhavnagar which is run by the S.N.D.T. Women's University, Bombay. The petitioner who was appointed as a Project Officer on a purely temporary basis under Population Education

Research Centre in the department of Continuing and Adult Education and Extension work at the aforesaid College, states that the aforesaid post is sanctioned by the University Grants Commission.

2. It appears that the Respondent - University issued an advertisement for the post of Project Officer and the said advertisement was published in "Phoolchhab" daily on 12th October, 1989. A copy of the said advertisement is at Annexure 'E' to the petition. Respondent No.4, Principal of the College, advised the petitioner to apply and appear before the selection committee. Accordingly the petitioner filled up the application form.

3. The Selection Committee met on 19th June, 1990 and out of 14 applicants seven were called for interview. Only four candidates out of the seven appeared for interview and the petitioner was one of them. The Selection Committee after interviewing all the candidates gave its report (Annexure 'G') dated 5th July, 1990, wherein it was stated thus :

> "The Committee interviewed the four candidates who appeared for interview. Of these they found Smt. Ilaben Trivedi and Shri Yogesh Trivedi suitable. They suggest that Smt. Ilaben Trivedi be appointed as a first choice and if she is not available, Shri Yogesh Trivedi be appointed since the post required post Master's diploma in Adult Education and M.Phil and Ph.D. in a subject related to adult learning or Ph.D. in subject under Social Science or Education or Completion of this requirement within eight years, they be informed of this requirement at the time of appointment."

4. Mr.K.A.Dave, who appeared on behalf of the petitioner submitted that the entire process of selection was vitiated because the committee had invoked the relaxation clause while in fact the advertisement did not refer to the same. It was further submitted that the q petitioner was qualified for the post, both academically and by way of experience. That Respondent No.5 who had been selected and appointed did not fulfill the academic qualification necessary for the post. He further contended that the Selection Committee did not state in its report that the petitioner was not found fit to be appointed. Relying upon the two decisions of this Court in the cases of A.K.Shimpi & Ors. Vs. State of Gujarat

& Ors., 24(1) GLR 398 and Dr.J.C.Parikh Vs. Sardar Patel University, AIR 1981 Guj. 248, it was stated that the guidelines laid down in the two decisions were not shown to have been fulfilled. Elaborating on this, it was submitted that the report of the Selection Committee did not show application of mind to the effect - whether the selected candidates possessed the requisite eligibility qualifications and whether the adjudication about suitability of the competing candidates is shown to have been made according to some rational or relevant norms which ought to have been prescribed in advance and made known to all the members of the Selection Committee. It was further submitted that nothing was available on record to show that any relevant material existed before the Selection Committee on the basis of which it could have arrived at a fair decision and further whether a rational and relevant formula relating to the qualification and assessment of marks was adopted. To a specific querry from the Bench, Mr.Dave submitted that his case was not based on mala fide or bias being attributed to the Selection Committee.

5. Mr.A.H.Mehta, learned Advocate who appears on behalf of the Respondent - University supported the order of selection and appointment of Respondent No.5 by referring to the affidavit-in-reply filed on behalf of Respondent No.1 - Deputy Registrar of the University as well as affidavit-in-reply filed by one Mrs.Motiya Prakash, Respondent No.3. Referring to the contention on behalf of the petitioner that the advertisement did not mention that the relaxation clause would be invoked, it was pointed out that the advertisement specifically referred to UGC norms and the relaxation clause formed part of the norms prescribed by the University Grants Commission. It was further submitted that the UGC norms which are available at Annexure 'F' prescribed essential norms and desirable norms in relation to academic qualification; that the requirement of being M.Phil. or Ph.D. was an essential norm provided it was a subject related to Adult learning. In so far as the requirement of good academic record, Mr.Mehta pointed out that the explanation laid down what were the criteria to be adopted for ascertaining "good academic record". Thereafter, the attention of the Court was drawn to the clause relating to the other conditions which laid down that in the event of necessity the academic qualification in relation to M.Phil or Ph.D. may be relaxed with a condition that the selected candidate would fulfill the conditions prescribed within the next eight years from the date of appointment. Mr. Mehta referred to and relied upon following the decisions :

(1) Dalpat Abasaheb Solunke V/s. B.S.Mahajan, AIR 90 SC 435

(2) Maisuria Mahendra Bhagwandas & Ors. V/s. State of Gujarat & Ors., 1990 (2) GLR 719

(3) Association of Assistant Engineers, Gandhinagar & Ors. Vs. State of Gujarat & Ors., 1988 (2) GLH (U.J. 1).

6. Having taken into consideration the submissions of both the sides as well as the principle laid down by various decisions cited at the Bar, this petition is required to be resolved in light of what is stated by the Apex Court in the case of Dalpat Abasaheb Solunke V/s. B.S.Mahajan, (supra). In the said decision, while dealing with a case where the High Court set aside the selection on the ground of comparative merits of the candidates, it was held that the High Court had exceeded its jurisdiction and while holding so the following principle was enunciated :

> ". . . .It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. . . ."

7. As can be seen from the facts on record, the relevant norms were available with the Selection Committee and the competing candidates were also aware of the same. Once the selection Committee recommended that Respondent No.5 - Smt. Ilaben Trivedi was suitable for the post, it was not necessary for the Selection Committee to state that the petitioner was not found suitable or that Respondent No.5 was superior to the petitioner. Respondent No.3 Smt. Motia Prakash, who is serving as a Director, Department of Continuing & Adult Education & Extension Work, S.N.D.T. Women's University,

Bombay has filed affidavit-in-reply dated 21st February, 1991, wherein she has stated that she was a member of the Selection Committee and the basis for selection as stated in the affidavit is :

"The expert members of the Selection Committee came to a common consensus which was based on

a) Performance during the interview reflecting field level & National level knowledge about Adult Education.

b) Consistently good academic record.

c) And field level knowledge.

and Mrs.Ilaben J. Trivedi was found to be the best amongst the other candidates who were called for the interview and accordingly the recommendations were made by the Selection Committee."

8. Therefore, in view of the aforesaid position, it is not possible for the Court to substitute its opinion in place of the decision of the Selection Committee. Mr. Dave, on behalf of the petitioner had categorically admitted that his case was not that there were any mala fide or bias in so far as the Selection Committee was concerned and further he did not dispute the constitution of the Committee. To put it in other words, the Committee was properly constituted, it consisted of experts and selected the candidates after going through all the relevant materials before it. In this circumstances, it is not advisable to sit in appeal over the selection so made.

9. The petition is accordingly rejected. Rule is discharged with no order as to costs.

10. On 19/1/1991 this Court issued Rule. Ad-interim relief which had been granted earlier was ordered to continue till 28/1/1991. From the record it does not appear that the order of ad-interim relief continued beyond 28/1/1991. However, even if it has continued, the same shall stand vacated.

(D.A. Mehta, J)

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'Bhavesh'
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